

Special Education and the Law

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Federal Laws for Students with Disabilities

- Section 504 of the Rehabilitation Act
 - Prohibits discrimination on the basis of disability in programs receiving federal funding
 - The student must have a physical or mental impairment which substantially limits one or more major life activities, such as learning, walking, concentrating, communicating...
 - Anti-discrimination law ensuring equal access to education.
 - Develop a 504 plan that will put accommodations and modifications into place
 - Provides disciplinary protections
 - Protects students in post-secondary education also.

More 504

- Each school must have a 504 coordinator. That person is usually the school counselor.
- Enforcement of 504: Oregon Department of Education
- <https://www.oregon.gov/ode/students-and-family/equity/civilrights/pages/default.aspx>
- Or just google Oregon Department of Education Civil Rights

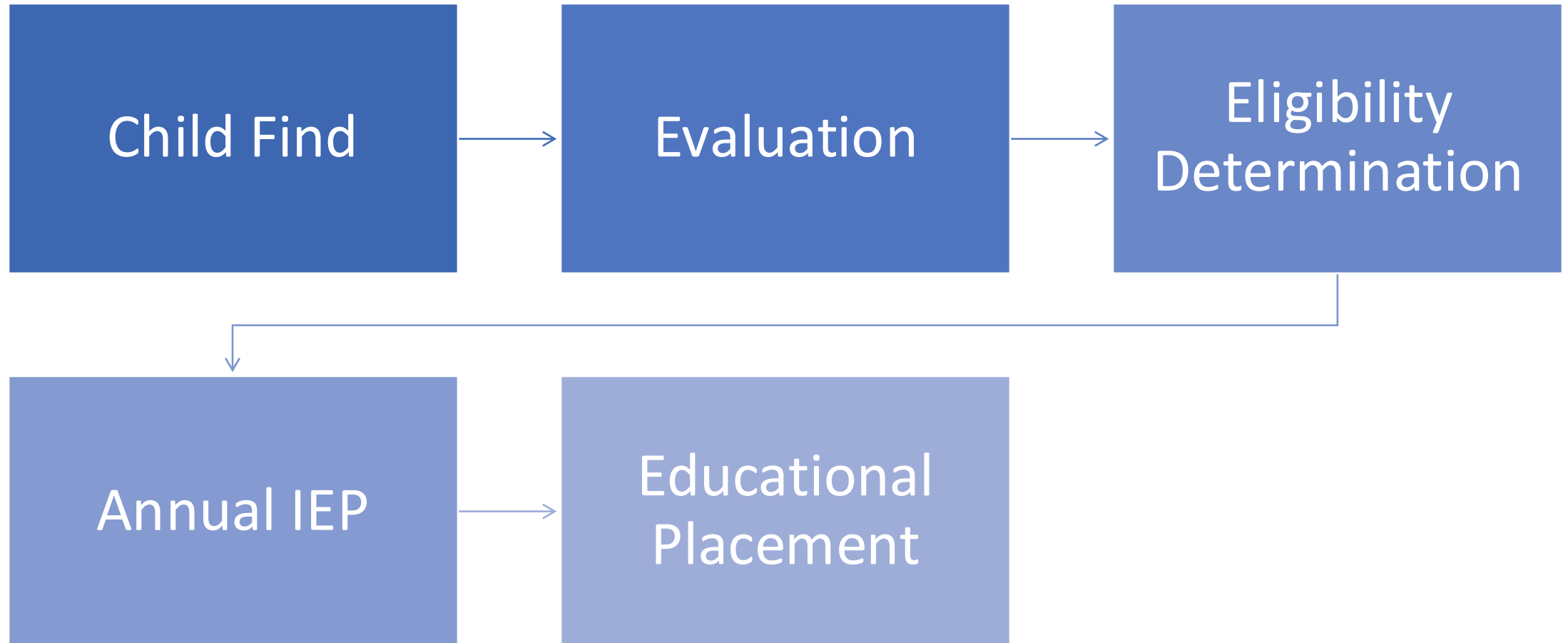
Individuals with Disabilities Education Act

(IDEA or IDEIA)

Free Appropriate Public Education (FAPE)

- Ensures special education and related services
- Must meet eligibility standards to receive protections
- Birth through age 21 or until student earns a standard diploma (whichever comes first)
- 20 USC §1400-1482 ; 34 CFR §300.1 et seq.
- OAR 581-015-2000 thru 581-015-2445

The Special Education Process



Child Find

- School districts have an affirmative duty to locate, identify and evaluate every child in the district who is suspected of having a disability.
- Applies to private school, charter school and home school students as well as students in mainstream public schools.
- OAR 581-015-2105 states that an initial evaluation must be conducted
 - When the district suspects or has reason to suspect
 - The child has a disability that has an adverse impact on the child's educational performance
 - And the child may need special education services

What is an Evaluation?

- An evaluation is defined as any procedure used to determine:
 - Whether the child has a disability and/or
 - The nature of the special education and related services needs.
 - The extent of the special education and related services needs.

Evaluations

- Must be comprehensive to identify ALL of the child's special education and related services needs, whether or not commonly linked to the child's disability category.
 - Must include **functional, developmental and academic** information.
- Must be conducted within 60 school days of **receiving parental consent**.
- No timeline in the law for seeking parental consent, but OSEP states that districts must "act in a timely manner."
- Evaluators prepare a written report with the results of the evaluation and the IEP team meets to review the results. The results should be explained in terms that parents can understand.

Parental Consent

- What is consent? Parent is:
 - **Fully informed** of all information relevant to the activity for which consent is sought
 - In his or her native language or other mode of communication.
 - Parent **understands** and **agrees** in writing to carrying out the activity
 - Consent form must describe the activity to which they are consenting. If it is a consent to release of records it must include a list of records that will be released and to whom.



When is Consent Required?

- Written parental consent is required in Oregon:
 - Before any evaluation or reevaluation. OAR 581-015-2110 (2)(b)
- When consent is not required:
 - No consent required for review of existing data
 - No consent required for screening a student by teacher or specialist to determine appropriate instructional strategies for curriculum implementation
 - Administering a test or evaluation that is administered to all children (unless consent is required of all parents for that test)
 - Conducting evaluations tests, procedures or instruments identified on the student's IEP as a measure for determining progress.
 - If the district made reasonable efforts to obtain consent and the child's parent has failed to respond.
 - 34 CFR 300.300 (c)

Independent Evaluations

- Parents have the right to request an independent evaluation at district expense whenever they disagree with the outcome of an evaluation the district has conducted.
- If the district refuses to conduct an evaluation, parents have the right to request an IEE.
- The district must consider any evaluation that is shared with them that was completed by a qualified professional.

Independent Evaluations

- An independent evaluation means:
 - An evaluation conducted by a qualified examiner
 - Who is not employed by the school district responsible for the education of the child.
- District can put limits on the amount spent and qualifications of evaluator, but must be reasonable.
- The district cannot unreasonably delay its response to the request.
 - Must provide funds for the evaluation or proceed to due process.

Eligibility

**Meets the
Requirements of
the Disability
Category**

+

**Adverse Impact on
Education**

+

**Needs Specially
Designed
Instruction**

=

**Eligible for
Special
Education**

Disability Categories

- Autism Spectrum Disorder
- Deafblindness
- Emotional Behavior Disability
- Deaf or Hard of Hearing
- Intellectual Disability
- Orthopedic Impairment
- Visual Impairment
- Other Health Impairment
- Specific Learning Disability
- Speech or Language Impairment (communication disorder)
- Traumatic Brain Injury
- Developmental Delay

Notes on Eligibility

- Once a student is found eligible for special education under one category, all of the student's needs must be addressed
 - Regardless of whether the need is typical of a student in that category.
- OAR 581-015-2120(4) Determination of Eligibility
 - For a child who may have disabilities in more than one category, the team need only qualify the child under one disability category.
 - However, the child must be evaluated in all areas related to suspected disability or disabilities, and the child's IEP must address all of the child's special education needs.
- Parents have the right to revoke consent for services at any time.

FAPE

- Individualized Education Program (IEP) – Special education and Related Services designed to meet the student's unique needs.
- Free and Appropriate Public Education (FAPE)
 - What's appropriate?
 - Meaningful educational benefit
- Board of Ed v. Rowley (1982)
 - Intent of the act was making education accessible.
 - Provides a basic floor of opportunity.
 - 2 part analysis:
 - Has the district complied with procedures?
 - Is the IEP reasonably calculated to enable the child to receive some educational benefit.
- Endrew F. (2017)
 - A school must offer an IEP reasonably calculated to enable a child to make progress in light of the child's circumstances.
 - "Every child should have the chance to meet challenging objectives."

In Other Words...

- It's an appropriate education if the services and supports provided take the student from their Present Levels to meeting (or almost meeting) their annual goals.
- Are the goals ambitious? Does the IEP offer access to instructional strategies and curricula aligned to challenging State academic content standards and ambitious goals **based on the unique circumstances of that child.** (OSEP guidance 2017)



IEP Process – How it Works

- Where is the student now in terms of skill levels?
 - Present Levels: Should cover all skill levels in positive non-judgmental language
- Where do we want them to be one year from now?
 - Annual goals should be very concrete and must be measurable.
 - Tied to the gen ed curriculum.
- How are we going to know if they got there?
- How much time/service is it going to take to get them there?
- What setting/classroom/placement does the student need to be in to get there?
- Other questions: Statewide testing, AT considerations, behavior impacts learning

IEPs

- Should be individualized
- Should be based on data
- Should all be based on team discussions and consensus decisions
- Districts may not use a lack of funding as reasoning for not providing a service

IEP Team Participants

- One or both parents
- General Education Teacher
- Special Education Teacher or Provider
- School District Representative
- Person to interpret evaluation results
- Anyone else a parent might want to invite.

Parents' IEP Meeting Rights

- Parents have the right to request an IEP meeting at any time
- The meeting must be held at a mutually agreeable time.
- Parents have the right to invite other people to participate in the IEP meeting.
- Parents have the right to an interpreter if they do not speak English or have significant hearing deficits.

Prior Written Notice

or Prior Notice of Special Education Action

- Districts must provide Prior Written Notice when
 - The student is identified as having a disability or the disability category changes
 - The student is evaluated or re-evaluated
 - The district proposes or refuses to change the provision of FAPE.
 - The student is initially placed in a special education program
 - Any time the child's placement is changed
- Notice must include:
 - It must describe the action the district wants to take or is refusing to take and the reason the district is taking that action.
 - Explain the options that were considered and why they were rejected
 - List evaluations, records or reports the district used as a basis of their action or refusal

Who is a Parent?

- A parent is one or more of the following persons:
 - A biological or adoptive parent of the child
 - A foster parent of the child
 - A legal guardian, other than a state agency
 - An individual acting in the place of a bio parent with whom the child lives or an individual who is legally responsible for the child's welfare.
 - A surrogate parent who has been appointed
- If more than one person is qualified to act as a parent and the bio or adoptive parent is attempting to act as the parent, the bio or adoptive parent is presumed to be the parent unless they do not have the legal authority to do so.

Surrogate Parents

- Three ways a surrogate may be appointed:
 - Districts must appoint a surrogate parent if the child has or is suspected to have a disability and:
 - No parent can be identified after reasonable efforts
 - The child is a ward of the state and there is reasonable cause to believe the child has a disability or
 - The child is an unaccompanied homeless youth.
 - A parent or adult student may give written consent for a surrogate to be appointed. The parent retains the right to receive notice and all of the info provided to the surrogate. May revoke consent at any time.
 - Juvenile court can appoint at the request of any party if:
 - The youth may be eligible for special ed
 - No other surrogate has been appointed
 - The requesting party can nominate someone who meets criteria
 - ORS 419C.220

The surrogate can **not** be an employee of the school district or any agency involved in the care or education of the child.

Duties:

- Protect the special ed and due process rights of the child
- Be familiar with the child's disability and special ed needs



Placement Decisions

- The final step in the IEP process is to determine placement...
 - Placement is a team decision.
 - The IEP team looks at the IEP goals and services and determines the least restrictive environment in which those goals can be met.
- Factors to consider when determining placement:
 - Potential harmful effects and benefits to the child
 - Quality and quantity of services the child needs
 - Educational impact on other students
 - Cost (may **not** be a stand-alone factor)
 - 9th Cir– Holland Case

Dispute Resolution

- Facilitated IEP meetings
- Mediation
- ODE complaint – Oregon Department of Education
- Due process hearing
- OCR complaint – Office of Civil Rights

ODE Complaint

- Writing a complaint:
 - Designed to be parent friendly
 - Sample form on the ODE website if parents want to complete.
 - Facts, violations, remedies
- **Can go back only one calendar year.**
 - ODE will send out an impartial investigator who will talk to parent and the district staff, and will review all relevant educational records.
- Remedies:
 - Compensatory education—Must request this in the complaint
 - Changes to policies and procedures
 - Training for district personnel.

Due Process Hearing

- Hearing request looks similar to ODE complaint
- Two year statute of limitations
- Opportunity to present expert testimony and recover attorney fees
- But cannot recoup costs of expert
- Most DP hearings settle (only 2 went to hearing in 2018)
- OAR 581-015-2345 et seq



Due Process Hearing

- Parent may request if they do not agree with identification, evaluation, educational placement of a child or provision of FAPE
- Must provide notice to the district and ODE
- District must respond to the request within 10 days
- Resolution meeting must be held within 15 days
 - Parents and relevant members of the IEP team with specific knowledge of the facts. Must include district rep with decision making authority
 - May not include an attorney for district unless parent is represented by attorney
 - Can be waived

OCR Complaint

- OCR has authority resolve complaints extends to allegations of discrimination based on race, color, national origin, sex, age or disability in public and private programs that receive Federal funds from the U.S. Department of Education.
 - Most schools and colleges and some other entities such as vocational rehabilitation agencies and libraries.
- 180 day statute of limitations
- Early Complaint Resolution
- Can take a long time to receive final decision from OCR

Discipline

Discipline Generally

- School district boards shall establish fair and reasonable procedures for discipline, suspension and expulsion. No corporal punishment.
- Students shall be liable to discipline, suspension or expulsion for misconduct including but not limited to:
 - Theft, disruption of school, damage or destruction of school property, damage or destruction of private property on school premises or during a school activity. Assault or threat of harm, unauthorized use of weapon or dangerous instrument, unlawful use of drugs, narcotics or alcoholic beverages, persistent failure to comply with rules of lawful directions of teachers or school officials.
- For both suspension and expulsion for students 5th grade and younger:
 - Only allowed for non-accidental conduct causing serious physical harm to a student or school employee; or
 - When a school administrator determines, based upon the administrator's observation or upon a report from a school employee, that the student's conduct poses a direct threat to the health or safety of students or school employees;

Suspension – OAR 581-021-0065

- Any exclusion from school for up to 10 school days
 - Informal send homes count as suspensions if the child is sent home due to a failure to comply with behavior expectations
 - In special circumstances, it can extend beyond 10 days if waiting for risk assessment, MH assessment or incarceration
- Notice required for all suspensions
 - Must include specification of charges, and
 - An opportunity for the student to present his or her view of the alleged misconduct.
 - The suspending official shall notify the student's parent or guardian of the suspension, the conditions for reinstatement, and appeal procedures, where applicable. These procedures may be postponed in emergency situations relating to health and safety.
- Must consider the age of the student and past pattern of behavior before imposing a suspension or expulsion.
- For students 5th grade and younger, if given an out of school suspension, school is required to take steps to prevent the recurrence of behavior and return the student to a classroom setting promptly to minimize disruption of academic instruction

Expulsions

- Limited to instances in which:
 - Student conduct poses a threat to the health or safety of students or school employees;
 - Other strategies to change student conduct have been ineffective, except that expulsion may not be used to address truancy; or
 - When the expulsion is required by law (weapons violation)
- For students 5th grade and lower:
 - Only allowed for non-accidental conduct causing serious physical harm to a student or school employee; or
 - When a school administrator determines, based upon the administrator's observation or upon a report from a school employee, that the student's conduct poses a direct threat to the health or safety of students or school employees;

Expulsion Hearing

- Students have a right to a hearing unless they or parents waive it.
- Hearing must be conducted by an impartial hearing officer– someone removed from the incident.
- Notice required, personal service or certified letter
 - Must include charges and the specific facts that support the charges and whether the district intends to consider the charges as reason for expulsion.
- The student has the right to be represented by counsel or have other persons in attendance
- OAR 581-021-0700

Hearing Procedure

- The student shall be permitted to introduce evidence by testimony, writings, or other exhibits;
- The student shall be permitted to be present and hear the evidence presented by the district;
- The hearings officer or the student may make a record of the hearing.
- Can request that it not be public.
- Strict rules of evidence do not apply to the proceedings. But good idea to object to create a record for appeal.
 - If appealed to school board, the board and student/parent receives findings of fact, recommended decision and whether the student was found guilty of the conduct alleged.

Alternative Schools

- Districts must notify parents and students of the availability of appropriate alternative schools:
 - If the student is expelled
 - After the second or any subsequent severe disciplinary problem within a three-year period.
 - If the student's attendance pattern is so erratic, the student isn't benefitting from the education.



Discipline of Special Education Students

- Schools can suspend children for up to 10 days in the school year, even if the behavior is related to the child's disability.
- After the 10th day, the district needs to provide services to the student.
- Once you get past 10 days of suspension, it is considered a change of placement, and the district should conduct a manifestation determination.

Manifestation Determination

- Team of people, including the parent meet to determine the following:
 - Did the conduct in question directly result from the district's failure to implement the IEP
 - Was the behavior caused by, or did it have a direct and substantial relationship to the student's disability.
- If the behavior is a manifestation of the student's disability:
 - The student returns to the educational placement they were in prior to the incident
 - And the district must conduct an FBA and implement a BSP. If one was already in place, review and modify as necessary
- If the behavior is not a manifestation, the student is disciplined the same as any other student, but district still must provide services and conduct FBA

Interim Alternative Placement

- If a student is found to have committed a weapons or drug violation, they can be removed to an Interim Alternative Education Setting (IAES) for 45 school days regardless of manifestation
 - Drug violation—use, possession, sale or solicitation of illegal drug or controlled substance. Does not include alcohol or tobacco
 - Weapon violation—carrying a weapon to school or a school function, or acquiring a weapon at school.
 - Weapon is a device, instrument, material or substance, animate or inanimate that is used for, or is readily capable of causing death or serious bodily injury, but not a pocket knife with blade of less than 2 ½ inches
- Or if the student has inflicted serious bodily injury on another person
 - Injury which involves substantial risk of death; extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

What to do when behavior interferes with learning

- Convene an IEP/504 team meeting and add behavior goals specific to the behavior occurring to the student's IEP.
- Request a Functional Behavior Assessment and Behavior Support Plan in writing
- Functional Behavior Assessment examines:
 - Why is the behavior happening
 - What need is the student trying to get met?
 - When is the behavior happening? What are the “triggers?”
 - What are the signs that the behavior is about to happen. (precursor, or antecedent behavior)
 - What are the appropriate behaviors that we would like to teach the student?

Functional Behavior Assessment

- An FBA is required any time a student
 - Has an IEP or 504 plan
 - And placed themselves, other students or staff at imminent risk of serious bodily injury as a result of the student's behavior.
- If one has already been conducted, the school district must review and/or revise the existing FBA
- The district must ensure that the behavior intervention plan is based on an FBA conducted by a qualified person;
- Ensure that the behavior plan appropriate addresses the student's needs;
- Allow service providers involved in the incident to provide meaningful input
- Ensure that the behavior plan was correctly implemented before making any revisions.

Behavior Support Plan

- A proactive plan that puts supports in place to help the student not engage in the behavior
- And identifies the skills the district needs to teach the student in order for the student to engage in positive behavior
- In addition, it outlines the responses the district can use when the behavior occurs
- Parents/caregivers are key contributors in helping to develop a good behavior plan

Behavior Support Plan

- Should include
 - Looking at reducing the trigger events, or ways to help student cope with trigger events
 - Ways for staff to respond to the student when staff see the antecedent behaviors
 - Other ways to have the student's needs met
 - Ways to respond when the behavior occurs
 - How to help the student de-escalate (if appropriate)



Acronyms

BSP/BIP Behavior Support Plan/Behavior Intervention Plan

FAPE Free and Appropriate Public Education

FBA Functional Behavior Assessment

IAES Interim Alternative Education Setting

IDEA Individuals with Disabilities Education Act

IDEIA Individuals with Disabilities Education Improvement Act

IEE Independent Education Evaluation

IEP Individualized Education Program

OAR Oregon Administrative Rules

ORS Oregon Revised Statutes

OSEP Office of Special Education Programs

PWN Prior Written Notice